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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,977	12/21/2001	Kenneth G. Stewart III	6714/38242	8245

23646 7590 04/28/2004

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EXAMINER

VU, STEPHEN A

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 04/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/023,977

Applicant(s)

STEWART ET AL.

Examiner

Stephen A Vu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2001 and 19 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 8-10, 13 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 11, 12, 14, 15 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/21/01</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

- I. Figures 1 and 3
- II. Figure 2

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-7 and 11-12 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record

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showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Mr. Mark Newman (#31,472) on April 22, 2004 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-7, 11-12, 14-15, and 17. Affirmation of this election must be made by applicant in replying to this Office action. Claims 8-10, 13, and 16 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Objections

Claim 11 is objected to because of the following informalities: it appears that the claim is not written in the proper Markush format. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 4-7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to

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which it pertains, or with which it is most nearly connected, to make and/or use the invention. The applicant has not provided antecedent basis support in the specification regarding the claimed subject matter in claims 4-7. There is no disclosure regarding the comparisons of the longest distance and the shortest distance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 2 recites the limitation "the floor" in line 2. There is insufficient antecedent basis for this limitation in the claim. With claim 11, the phrase "or other similar support" is indefinite and does not clearly set forth the metes and bounds of the patent protection desired.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2,4,6,11, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Pecorella (#5,346,279).

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Pecorella shows a support device comprising a pair of arm rests (74), at least one base member (30), at least one first support (78) affixed to the base member (30) and one of the arm rests (74) between a middle and a front end of the arm rest, at least one second support (78) affixed to the base member and one of the arm rests (74) between the middle and a rear end of the arm rest (see attached Appendix A-#5,346,279). The first and second supports are vertically adjustable with respect to the base member. The arm rests are connected to each other via the first and second supports and the base member.

With claim 2, the support device does not extend to a floor.

With claims 4 and 6, the comparison of the structural elements with body parts of a human being is not given any patentable weight, since a human being is not considered to be patentable subject matter under 35 U.S.C 101.

With claim 11, the seat is a chair seat.

With claim 14, the device has a back rest (36).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3,5, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Percorella (#5,346,279).

With claim 3, Percorella discloses the claimed invention except for the weight of the device to be less than ten pounds. It would have been an obvious matter of design choice to construct the support device to be less than ten pounds, since applicant has not disclosed that the desired weight of the device less than ten pounds solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the device being more than ten pounds, like at eleven pounds.

With claim 5, Percorella discloses the claimed invention except for the longest distance between the base and armrests does not exceed twelve inches. It would have been an obvious matter of design choice to design the longest distance between the base and arm rests to not exceed twelve inches, since applicant has not disclosed that this desired longest distance solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the longest distance to be more than twelve inches, like thirteen inches.

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With claim 7, Percorella discloses the claimed invention except for the shortest distance between the base and armrests does not exceed five inches. It would have been an obvious matter of design choice to design the shortest distance between the base and arm rests to not exceed five inches, since applicant has not disclosed that this desired shortest distance solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the shortest distance to be more than five inches, like six inches.

Claims 1-7, 11-12, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haley (#2,659,423).

Haley shows a support device comprising an arm rest (13), at least one base member (10), at least one first support (14) affixed to the base member (10) and the arm rest between a middle and a front end of the arm rest, at least one second support (14) affixed to the base member and the arm rest between the middle and a rear end of the arm rest. The first and second supports are vertically adjustable with respect to the base member. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a second arm rest parallel to the first arm rest in order to support both user's arms.

With claim 2, the support device does not extend to a floor.

With claim 3, Haley discloses the claimed invention except for the weight of the device to be less than ten pounds. It would have been an obvious matter of design choice to construct the support device to be less than ten pounds, since applicant has not disclosed that the desired weight of the device less than ten pounds solves any

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stated problem or is for any particular purpose and it appears that the invention would perform equally well with the device being more than ten pounds, like at eleven pounds.

With claims 4 and 6, the comparison of the structural elements with body parts of a human being is not given any patentable weight, since a human being is not considered to be patentable subject matter under 35 U.S.C 101.

With claim 5, Haley discloses the claimed invention except for the longest distance between the base and armrests does not exceed twelve inches. It would have been an obvious matter of design choice to design the longest distance between the base and arm rests to not exceed twelve inches, since applicant has not disclosed that this desired longest distance solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the longest distance to be more than twelve inches, like thirteen inches.

With claim 7, Haley discloses the claimed invention except for the shortest distance between the base and armrests does not exceed five inches. It would have been an obvious matter of design choice to design the shortest distance between the base and arm rests to not exceed five inches, since applicant has not disclosed that this desired shortest distance solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the shortest distance to be more than five inches, like six inches.

With claim 11, the seat is a car seat (see col. 1, line 4).

With claim 12, the armrests are padded (col. 1, lines 41-42).

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With claim 15, based on the broadest reasonable interpretation, it is deemed that the armrests have a crutch shape.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haley in view of Murphy.

Haley discloses the claimed invention except for the base to have a non-slip material on the bottom side. Murphy teaches a pad (10) having a non-slip surface (22) consisting of a textured rubberized layer below the base (20) (see col. 3, lines 43-49). It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ Murphy's non-slip material on the bottom side of Haley's base in order to increase the coefficient of friction between the base and the seat and prevent the base from sliding out of position on the seat.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hunter, Dustin, Reiersen, Van Briesen, Clute, and Field are cited as showing similar types of support device.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A Vu whose telephone number is 703-308-1378. The examiner can normally be reached on M-F from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Stephen Vu
April 26, 2004